I write to oppose Alternative A and support Alternative B in the proposed amendments to MRPC 1.5. Limiting family law cases to hourly fee arrangements or fixed fees unnecessarily interferes with a client's right to contract for the most appropriate fee arrangement for his/her case. It also will limit the availability of legal services, particularly for those without immediate access to money to pay a customary retainer fee. Women in particular may be disadvantaged by Alternative A.

The hourly fee arrangement has many flaws and often works to the client's disadvantage. In an hourly fee contract, the client has little say in how an attorney's time is expended, nor how much time is expended.   In a results-oriented fee agreement, the client is in complete control.   Due to the consultation that must take place between the lawyer and client, the client has the final say.

Fixed fee arrangements, while having some advantages over hourly fees, also have shortcomings. Lawyers assume the risk of charging too little to cover their time and costs in a fixed fee case. As a result, lawyers who accept fixed fees often estimate higher than what they think the representation will cost if billed hourly, thereby reducing their risk, but also increasing the fees paid by the client. In my appellate practice, I nearly always charge more in a fixed fee case than I would if the case were going to be billed hourly. It is my way to shift some of the risk back to the client. This dynamic makes legal services less affordable for low and moderate income clients.

An enhanced fee agreement avoids the pitfalls of both hourly and fixed fee contracts. It allows lawyers to request, and clients to agree upon, a fee that matches the value of the representation to the client.

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